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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL MENDIOLA,
Petitioner,
vs.
W.J. SULLIVAN, Warden,
Respondent.

CASE NO. 07-CV-0130 W (JMA)
**ORDER ADOPTING REPORT
AND RECOMMENDATION
AND DISMISSING WITH
PREJUDICE HABEAS CORPUS
PETITION (Doc. No. 24)**

On January 19, 2007 Petitioner Michael Mendiola ("Petitioner"), a state prisoner proceeding *pro se*, filed a habeas corpus petition seeking relief under 28 U.S.C. § 2254. (Doc. No. 1.) On February 6, 2007 the Court dismissed the petition without prejudice and with leave to amend. (Doc. No. 3.) On April 26, 2007 (*nunc pro tunc* to March 19, 2007) Petitioner filed a First Amended Petition ("Petition"), which only argued a single ground for relief. (Doc. No. 10.) On July 5, 2007 Respondent W.J. Sullivan ("Respondent") filed a motion to dismiss, apparently against the original petition. On November 29, 2007 the Court adopted Magistrate Judge Adler's Report and Recommendation that Respondent's motion be denied as moot, and denied Respondent's motion to dismiss. (Doc. No. 20.) Magistrate Judge Adler then ordered Respondent to answer or move to dismiss the amended Petition. (Doc. No. 21.) Magistrate Judge Adler also ordered Petitioner to file an opposition or traverse, depending on Respondent's course of action. (*Id.*)

1 On January 16, 2008 Respondent filed an Answer to the amended Petition.
2 (Doc. No. 22.) Petitioner did not file a traverse, nor did he ask for an extension of time
3 in which to do so.

4 On April 24, 2008 Magistrate Judge Adler issued his Report and
5 Recommendation ("Report") recommending that Petitioner's amended Petition be
6 dismissed with prejudice. (Doc. No. 19.) The Report also ordered that any objections
7 were to be filed by May 27, 2008, and any replies filed by June 10, 2008. To date, no
8 objections have been filed by either party, nor has there been any requests by either
9 party for additional time in which to file any objections.


10 A district court's duties concerning a magistrate judge's report and
11 recommendation and a respondent's objections thereto are set forth in Rule 72(b) of
12 the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections
13 are filed, the district court is not required to review the magistrate judge's report and
14 recommendation. See United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir.
15 2003) (holding that 28 U.S.C. 636(b)(1)(c) "makes it clear that the district judge must
16 review the magistrate judge's findings and recommendations de novo *if objection is made*,
17 but not otherwise") (emphasis in original); Schmidt v. Johnstone, 263 F. Supp. 2d 1219,
18 1226 (D. Arizona 2003) (concluding that where no objections were filed, the District
19 Court had no obligation to review the magistrate judge's Report). This rule of law is
20 well established within the Ninth Circuit and this district. See Wang v. Masaitis, 416
21 F.3d 992, 1000 n. 13 (9th Cir. 2005) ("Of course, de novo review of a R & R is *only*
22 required when an objection is made to the R & R.") (emphasis added) (citing Reyna-
23 Tapia, 328 F.3d 1121); Nelson v. Giurbino, 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005)
24 (Lorenz, J.) (adopted Report without review because neither party filed objections to
25 the Report despite the opportunity to do so, "accordingly, the Court will adopt the
26 Report and Recommendation in its entirety."); see also Nichols v. Logan, 355 F. Supp.
27 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

28 The Court therefore accepts Judge Adler's recommendation, and **ADOPTS** the

1 Report in its entirety. For the reasons stated in the Report, which is incorporated
2 herein by reference, the Court **DISMISSES WITH PREJUDICE** Petitioner's amended
3 Petition. (Doc. Nos. 10, 24.)

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6 **IT IS SO ORDERED.**

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8 **DATE:** July 1, 2008

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11 **HON. THOMAS J. WHELAN**
12 United States District Court
13 Southern District of California
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